

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE  
(March 18, 1997 Session)

**FILED**  
  
July 9, 1997  
  
Cecil Crowson, Jr.  
Appellate Court Clerk

WADEY A. JOHNS,	)	HAMBLETON CIRCUIT
	)	
Plaintiff-Appellee,	)	Hon. William Jenkins,
	)	Judge.
v.	)	
	)	Hon. John K. Wilson,
HOWMET CORPORATION,	)	Judge.
	)	
Defendant-Appellant.	)	No. 03S01-9609-CV-00092

For Appellant:

Kelly A. Campbell  
Wimberly, Lawson, Norton & Luhn  
Morristown, Tennessee

For Appellee:

Danny M. Hyhorchuk  
Morristown, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court  
William H. Inman, Senior Judge  
Joe C. Loser, Jr., Special Judge

REVERSED AND DISMISSED

Loser, Judge

## MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer contends (1) the claim is barred by the applicable statute of limitations, (2) the trial court erred by setting aside a previously approved settlement and (3) the trial court erred in admitting certain evidence. The panel has concluded the claim is time barred.

The employee or claimant, Wadey Johns, suffered a compensable injury to her thumbs and received the medical and temporary total disability benefits to which she was entitled under the Workmen' Compensation Act. After returning to work, she negotiated, without the assistance of counsel, to settle her claim for future medical and permanent partial disability benefits. On February 18, 1992 she petitioned, jointly with the employer, the circuit court to approve a settlement.

The petition she signed said, among other things, "...that said settlement is in substantial accord with the Tennessee Workers' Compensation Law and is in the best interest of the plaintiff." The settlement provided the claimant would receive, in addition to those benefits already received by her, \$3,263.94 in permanent partial disability benefits and an additional \$3,236.06 for her future medical benefits, in a lump sum. The settlement was approved the same day by Judge Wilson, who expressly found the settlement to be in the best interest of the claimant.

More than one year and five months later, on July 29, 1993, the claimant filed a "Petition to Set Aside Judgment," wherein she averred the employer was guilty of "fraud and gross misrepresentation" in procuring the settlement. The particular facts and circumstances constituting fraud and misrepresentation were not stated. After an evidential hearing, Judge Wilson granted the petition on the ground of mutual mistake of fact. After an oral hearing on April 11, Judge Jenkins awarded additional benefits.

The claimant contended then and now that such action was authorized by Tenn. R. Civ. P. 60.02 and Tenn. Code Ann. section 50-6-231.<sup>1</sup> By Rule 60.02<sup>2</sup>, a motion for relief from a final judgment grounded on mistake, fraud or misrepresentation must be made not more than one year after entry of the judgment from which relief is sought. Since this petition was not timely filed, it is time barred under the rule, unless the statute allows more time. It does not.

Moreover, Tenn. R. Civ. P. 7.02<sup>3</sup> requires that an application for relief under Rule 60.02 state with particularity the grounds therefor; and Tenn.

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<sup>1</sup> **50-6-231. Lump payments final ---Modification of periodic payments for more than six months.** --- All amounts paid by employer and received by the employee or the employee's dependents, by lump sum payments, shall be final, but the amount of any award payable periodically for more than six (6) months may be modified as follows:

(1) At any time by agreement of the parties and approval by the court; or

(2) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the courts by either party, on the ground of increase or decrease of incapacity due solely to the injury. In such cases, the same procedure shall be followed as in section 50-6-225 in case of a disputed claim for compensation.

<sup>2</sup> **60.02. Mistakes -- Inadvertence --- Excusable Neglect --- Fraud, etc.** --- On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this Rule 60.02 does not affect the finality of a judgment or suspend its operation, but the court may enter an order suspending the operation of the judgment upon such terms as to bond and notice as to it shall seem proper pending the hearing of such motion. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court. Writs of error coram nobis, bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

<sup>3</sup> **7.02. Motions and Other Papers.** --- (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters (relative to the) form of pleadings apply to all motions and other papers provided for by these rules.

R. Civ. P. 9.02<sup>4</sup> requires that in all averments of fraud or mistake, the circumstances constituting fraud or mistake be stated with particularity. Rules 7.02 and 9.02 are mandatory as a prerequisite to invoking the jurisdiction of the trial judge to exercise his discretion in granting or refusing the extraordinary relief of disturbing the finality of a judgment on the ground of mistake, fraud or misrepresentation. See Hopkins v. Hopkins, 572 S.W.2d 639 (Tenn. 1978).

Additionally, the panel has independently examined the record and finds the evidence preponderates against a finding of mutual mistake of fact. For all the above reasons, the panel concludes the trial court erred in setting aside the previously approved settlement.

Some time after the court approved the above settlement, the claimant commenced a separate action for benefits for medical care and disability benefits resulting from work related carpal tunnel syndrome. That action was voluntarily dismissed on February 27, 1995. At the hearing on the Rule 60 motion on April 11, 1996, the claimant was allowed to amend her motion to include a separate claim for those benefits. Because the injury must necessarily have occurred more than one year before the date of the amendment, it is barred by the one year statute of limitations.

Because the panel has concluded the matter must be dismissed as being time barred and for lack of subject matter jurisdiction, the third issue, attacking the admissibility of evidence, is pretermitted. The judgment of the trial court is reversed and vacated, and the claimant's "Petition to Set Aside Judgment" is dismissed. Costs on appeal are taxed to the plaintiff-appellee.

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<sup>4</sup> **9.02. Fraud, Mistake, Condition of the Mind.** --- In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Joe C. Loser, Jr., Judge

CONCUR:

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Frank F. Drowota, III, Associate Justice

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William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

WADEY A JOHNS, ) Hamblen Circuit  
Plaintiff-Appellee, )  
v. ) NO. 92-CV-093  
 ) NO. 03-S-01-9609-CV-  
HOWMET CORPORATION, ) Hon. William Jenkins, Judge  
Defendant-Appellant. ) Reversed and dismissed.

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed to the plaintiff-appellee  
and execution may issue if necessary.

It is so ordered this \_\_\_\_\_ day of  
\_\_\_\_\_, 1997.

PER CURIAM

Drowota, J., not participating